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October 23, 1998

VIA HAND DELIVERY

F. Andrew Turley, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4800: In Re James Capra

Dear Mr. Turley:

This letter responds to a letter dated September 1, 1998, informing Mr. James Capra of a complaint ("Complaint") filed by John Anthony La Pietra in the above reference matter. Specifically, the Complaint alleges that Mr. Capra violated the Federal Election Campaign Act of 1971, as amended, ("FECA") by making excessive contributions to Congressman Nick Smith's 1998 primary election campaign. To the contrary, Mr. Capra's contributions to Congressman Smith's primary election campaign are within the \$1,000 per election limit prescribed under FECA. Thus, the Federal Election Commission ("FEC" or "Commission") should find no reason to believe that a violation occurred regarding Mr. Capra's contributions.

The Complaint apparently relies on Congressman Smith's public campaign records which indicate that Mr. Capra made two \$1,000 contributions to Congressman Smith's re-election campaign prior to the primary election which occurred on August 4, 1998. See Complaint at Page 1. The second contribution ("Second Contribution") was made by a check dated July 20, 1998. See Copy of check attached at Exhibit 1. Although the Second Contribution was made prior to the August 4, 1998 primary, the Second Contribution was redesignated in writing to Congressman Smith's general election. See Letter from Nick Smith to James Capra

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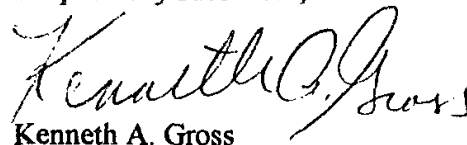
and Letter from James Capra to Nick Smith attached at Exhibit 2 (hereinafter "the Letters").

An individual may contribute \$1,000 per candidate, per primary or general election. See 2 U.S.C. § 441a(a)(1). FEC regulations permit a contributor to designate a contribution to a specific election, e.g., the primary or general election. See 11 C.F.R. § 110.1(b)(2), (b)(4). If the contributor does not designate a contribution to a specific election, it is attributed to the closest upcoming federal election. See 11 C.F.R. § 110.1(b)(2). However, a contributor who makes an undesignated contribution which exceeds the \$1,000 per election limit may later designate that contribution to a different, specific election. See 11 C.F.R. § 103.3(b)(3); 11 C.F.R. § 110.1(b)(5). That is what occurred here.

Congressman Smith's campaign committee sought in writing the designation of the Second Contribution to the general election during the sixty day window permitted by Commission regulations, and in response the contributor redesignated the contribution. See the Letters. Mr. Capra has not made any further contributions to Congressman Smith's 1998 re-election campaign. Therefore, Mr. Capra contributed only \$1,000 to Congressman Smith's primary election campaign and \$1,000 to Congressman Smith's general election campaign. Thus, Mr. Capra did not exceed the contribution limits imposed under FECA.

For the forgoing reasons, the Commission should find no reason to believe that Mr. Capra's contributions violated FECA and no further action should be taken against Mr. Capra in this matter.

Respectfully submitted,


Kenneth A. Gross

Attachments

EXHIBIT 1

99.04.392.1496

JAMES R. CAPRA
ELLEN M. CAPRA
3 SACKETT LANDING
RVE, NY 10580-4302

1-4160 748
210
6401225
DATE 7/20/98

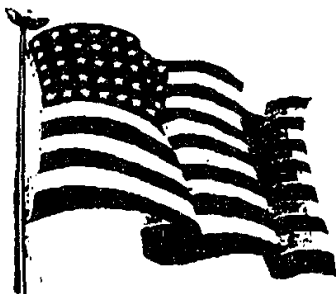
PAY TO THE ORDER OF CONGRESSMAN NICK SMITH
015510570 8885532838 05-05-98 0803081000.00
One thousand & 00/100*****
DOLLARS

CITIBANK
MEMO
1998 Re-election

James Capra

4846 262 107 66

EXHIBIT 2



Nick Smith for Congress Committee

P.O. Box 601
Jackson, MI 49201

Voice: (517) 768-7777
Fax: (517) 768-0739

September 9, 1998

James Capra
3 Sackett Landing
Rye, NY 10580

Dear James:

I'm sure that you have received by now copies of a Democrat-inspired complaint to the FEC. Unfortunately, desperate candidates sometimes resort to desperate actions.

Enclosed is a letter for you to sign that redesignates your contribution to my campaign. This should fully resolve all complaints related to your contribution. I apologize again for any inconvenience that this Democrat-inspired attack has caused you. Please sign and return this letter *as soon as possible*.

Thanks again for your generous contribution. I deeply regret any trouble this has caused.

Sincerely,


Nick Smith

Congressman Nick Smith
Nick Smith for Congress Committee
P.O. Box 601
Jackson, MI 49204

Congressman Smith:

Please designate my campaign contribution of \$1,000 on 7/31/98 to your 1998 general election campaign.

Sincerely,


James Capra